

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

IN RE: ZETIA (EZETIMIBE) ANTITRUST
LITIGATION

Case No. 2:18-md-2836

THIS DOCUMENT RELATES TO:
No. 2:20-cv-1005

**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF UNITED HEALTHCARE SERVICES, INC.’S
UNOPPOSED MOTION TO BE RELIEVED FROM PRETRIAL ORDER NO. 9 AND
FOR A LIMITED STAY OF ITS CASE**

Plaintiff United HealthCare Services, Inc. (“UHS”) submits this memorandum of law in support of its motion to be relieved from the schedule provided in Pretrial Order No. 9 (ECF No. 909) (“PTO 9”) and for a limited stay of its case (No. 2:20-cv-1005) until February 28, 2021.

In an Order dated October 6, 2020 (ECF No. 1186), the Court directed UHS to “advise the Court, by motion, if [it] intends to request any modification” of the Court’s “procedural Orders” after conferring with counsel for the other MDL plaintiffs. (ECF No. 1186 at 2.) UHS respectfully submits that counsel for all Plaintiffs have so conferred, and UHS does not request modifications to the procedural Orders issued in this MDL, including the Orders identified by the Court in its October 6, 2020 Order, with the exception of PTO 9.

UHS filed this case on September 4, 2020, shortly after Magistrate Judge Miller issued a Report and Recommendation that this Court certify an End-Payor Plaintiff class excluding, among other claims, “any TPPs that used . . . OptumRx as its pharmacy benefits manager.” (ECF No. 1094 at 4-5). Because that Report and Recommendation excludes a significant share of UHS’s claims from the recommended EPP class, UHS promptly filed suit to assert its claims independently.

UHS recognizes that the Court and the other parties are in the midst of preparing for a trial set to begin on February 23, 2021 (ECF No. 909 at 4), and does not wish to interfere with that trial schedule or unnecessarily burden the Court or the parties. After conferring with Class Counsel for the Direct Payer Class, Interim Class Counsel for the End Payer Class, and Counsel for the Retailers, UHS and the other Plaintiffs' counsel collectively believe that it would be most efficient for the Court to stay UHS's case until February 28, 2021, so that the Court can focus on the imminent trial of those Plaintiffs' claims that are set to proceed. *See Williford v. Armstrong World Indus., Inc.*, 715 F.2d 124, 127 (4th Cir. 1983) (recognizing the inherent general equity powers in courts to order discretionary stays to further the efficient management of their dockets).

In the meantime, UHS requests clarification that it is relieved of obligations under PTO 9 and that the pretrial schedule applicable to other parties does not apply to UHS. Having conferred with the other Plaintiffs' counsel, UHS respectfully submits that the schedule provided in PTO 9 cannot practically be applied to its case without substantial disruption to the MDL. Instead, UHS requests that the Court order UHS and Defendants to meet and confer regarding a schedule for UHS's action and submit a proposal to the Court no later than April 1, 2021.

UHS also wishes to inform the Court that because it is already a party to the Discovery Confidentiality Order (ECF No. 171 at 4, n.1), it intends to use the time governed by a limited stay to familiarize itself with the record, including the discovery taken to date and the bases for the Court's substantive rulings.

UHS understands that Class Counsel for the Direct Payer Class, Interim Class Counsel for the End Payer Class, and Counsel for the Retailers support UHS's motion, and that Defendants do not oppose the stay requested.

Dated: October 14, 2020

Respectfully submitted,

/s/ Katherine M. Cheng

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CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will automatically send an email notification of such filing to all counsel of record who have filed an appearance.

Dated: October 14, 2020

/s/ Katherine M. Cheng

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